

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 50 OF 1993

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SPECIAL CIVIL APPLICATION NO 51 OF 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MER KESHU RAJSHI (HEIR OF MER RAJSHI) & ANOTHER

Versus

SARPANCH

Appearance: IN BOTH THE MATTERS.

MR JJ YAJNIK for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2000

ORAL JUDGEMENT

The petitioners in both these petitions are occupants of the residential premises belonging to Ranavadvala Gram Panchayat (hereinafter referred to as 'the Panchayat') and challenge the orders of eviction made against them. Both the petitions arise of the

similar facts and involve identical question of law. The petitions are, therefore, decided by this common judgment.

By Resolution dated 2nd July, 1964, the residential premises belonging to the Panchayat was given on monthly rent of Rs.7/- to one Mer Rajshi Malde-the father of the petitioner in Special Civil Application No. 50/93. After the death of the said Rajshi Malde, the petitioner Keshu Rajshi continued to occupy the said premises. However, the petitioner made default in payment of rent and the Panchayat required the said premises for establishing a pre-primary school for the village children. The Panchayat, therefore, on 13th February, 1991, passed Resolution No. 6 and resolved to recover a sum of Rs. 970/- from the petitioner being the amount of arrears of rent and the possession of the premises for establishing a pre-primary school. Accordingly, by notice dated 17th March, 1991, the petitioner was called upon to remit the sum of Rs. 970/-being the amount of arrears of rent and to hand over the vacant possession of the said premises. Feeling aggrieved, the petitioner instituted Eviction Case No. 3/92 before the Competent Officer under section 8 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as 'the Act').

By Resolution No.5, dated 27th May, 1983, the Panchayat had resolved to give one of its residential premises on monthly rent of Rs.15/- to one Mer Khima Rajshi-the petitioner in Special Civil Application No. 51/93. The said Khima Rajshi made default in payment of rent and the Panchayat, therefore, under its Resolution No.7, dated 13th February, 1991, terminated the tenancy of the petitioner and decided to recover a sum of Rs. 504/- being the amount of arrears of rent and to recover the possession of the premises with a view to establishing a pre-primary school for the children of the village. Pursuant to the said Resolution, on 17th March, 1991, the Panchayat issued a notice for recovery of the sum of Rs. 504/- being the amount of arrears of rent. On 18th October, 1991, the petitioner was called upon to hand over the vacant possession of the premises in question. Feeling aggrieved, the petitioner instituted Eviction Case No. 2/91 before the Competent Officer under the Act.

Both the above referred Eviction Cases were heard by the Deputy District Development Officer, Junagadh (the Competent Officer under the Act) and were dismissed on

28th May, 1992. The Competent Officer took the view that the premises in question were 'public premises' within the meaning of section 2 (f) of the Act, both the applicants were in arrears of rent and both the premises were required by the Panchayat for public purpose i.e. for establishing a pre-primary school. Both the petitioners were, therefore, directed to hand over the vacant possession of the respective premises within a period of 30 days, and to make payment of the amount of arrears of rent. Feeling aggrieved, the petitioner in Special Civil Application No. 50/93 preferred Regular Civil Appeal No. 14/92, and the petitioner in Special Civil Application No. 51/93 preferred Regular Civil Appeal No. 15/92 before the District Judge, Junagadh (Appellate Authority under the Act).

The appeals were heard by the learned Assistant Judge, Junagadh, under section 9 of the Act. The learned Assistant Judge by his judgment and order dated 23rd November, 1992, upheld the orders of the Competent Officer and dismissed the appeals. Feeling aggrieved, the petitioners have preferred the present petitions.

Mr. Yagnik has submitted that the petitioners were the tenants of the Panchayat and the rent court alone shall have the jurisdiction to order eviction of the petitioners. In other words, the premises in occupation of the petitioners can not be said to be 'public premises', and neither the Competent Officer nor the Appellate Authority had jurisdiction to decide the issue. I do not agree with the contentions raised by Mr. Yagnik. Both the authorities below have found that the premises in occupation of the respective petitioner was the property of the Panchayat. In view of the definition of term 'public premises' contained in section 2 (f) of the Act, it can not be gainsaid that the premises in occupation of the petitioners are the 'public premises' within the meaning of the Act. It is also found that both the petitioners were in arrears of rent and by Resolution dated 3rd December, 1991, passed by the Panchayat, the respective tenancy was terminated. It is also held that both the premises were required by the Panchayat for establishing a pre-primary school for the village children.

As discussed hereinabove, the Competent Officer and the Appellate Authority had jurisdiction to decide the matters at issue and to direct the eviction of the petitioners. In view of the above concurrent findings recorded by both the authorities below, the petitions are dismissed. Rule nisi issued in each of the petitions is

discharged. Interim relief granted to each of the petitioners is vacated. The parties shall bear their own costs. The Registry shall maintain a copy of this order in both the petitions.

(MS R.M.DOSHIT J)

JOSHI